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In the Supreme Court
OF THE
United States

OCTOBER TERM 1973

No. 73-640

DWIGHT GEDULDIG, *Appellant,*

VS.

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Appellees.*

DWIGHT GEDULDIG, *Appellant,*

VS.

AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, individually and on behalf of all other women similarly situated, *Appellees.*

Consolidated Cases on Appeal from the United States District Court for the Northern District of California

BRIEF OF PACIFIC LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF APPELLANT

OPINION BELOW

The three-judge court, United States District Court for the Northern District of California, in an opinion

not yet reported, declared that the third sentence of the California Unemployment Insurance Code, Section 2626, which excludes pregnancy from State Disability Insurance Coverage, deprives pregnant women of the equal protection of the laws contrary to the Fourteenth Amendment and is therefore void.

INTEREST OF AMICUS CURIAE

Pacific Legal Foundation is a nonprofit corporation organized and existing under the laws of California for the purpose of engaging in litigation on behalf of California citizens in matters affecting the public interest.

Policy for the Pacific Legal Foundation is established by a Board of Trustees composed of concerned California citizens. Nine of the seventeen-member Board are attorneys. The Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community.

The State Disability Insurance program at issue is but one part of a comprehensive plan of social and economic legislation established by the California Legislature. State Disability Insurance interacts with other legislative programs such as unemployment insurance, workmen's compensation, and aid to families with dependent children to provide a balanced system of social and economic protection for California citizens. This comprehensive plan has been established by the California Legislature to provide the maxi-

mum level of protection at an equitable cost to the California citizen.

The Pacific Legal Foundation appears here because of its conviction that the citizens of California have been deprived by the decision of the court below of their right to have the level of disability benefits and the costs thereof set by their own legislature, lawfully elected and responsive to the needs of these citizens. The Pacific Legal Foundation is concerned that the decision below typifies a trend in some lower courts to impose philosophies upon the public in the name of equal protection but without other regard to law or constitution.

Pacific Legal Foundation is gravely concerned by the action of the court below in overturning a California statute on a rationale more sociological than constitutional. Pacific Legal Foundation is further alarmed by the lower court's misreading of the controlling precedents established by this Court [*Dandridge v. Williams,* 397 U.S. 471 (1970), *Jefferson v. Hackney,* 406 U.S. 535 (1972), *Shapiro v. Thompson,* 394 U.S. 618 (1969), among others] defining equal protection of the laws. Pacific Legal Foundation considers that this case raises fundamental questions concerning judicial powers and functions and the erosion of the principles of judicial restraint and state/federal comity.

Pacific Legal Foundation believes that, possibly because of emphasis on other points, the principles of judicial restraint and state/federal comity were not fully developed in the courts below.

Pursuant to Supreme Court Rule 42, this brief is filed with the written consent of all parties, which consent has been filed with the Clerk of the Court.

ARGUMENT

I

THE EXCLUSION OF MATERNITY BENEFITS FROM DISABILITY INSURANCE COVERAGE IS VALID AND MEETS THE REQUIREMENTS OF EQUAL PROTECTION IN THAT IT HAS A RATIONAL BASIS AND IS FREE FROM INVIDIOUS DISCRIMINATION

The California law under review is one in the area characterized by this Court as the social and economic field. The California Disability Insurance program was enacted by the Legislature "to compensate in *part* [emphasis added] for the wage loss sustained by individuals unemployed because of sickness or injury and to reduce to a minimum the suffering caused by unemployment resulting therefrom." California Unemployment Insurance Code (UIC), Section 2601.

It must be emphasized that the purpose of this disability insurance program is to compensate wage loss only in part. The California Legislature did not believe it to be feasible to provide complete compensation for all disabling circumstances causing wage loss any more than the Legislature believed it feasible to recompense individuals for the total amount of wages lost because of disability.

The Legislature made clear that the general purpose of the disability insurance program is to provide

only partial compensation. This purpose is carried out by a limitation on the amount of payments (UIC 2655), in a limitation of payment duration (UIC 2653), and by the exclusion of pregnancy benefits (UIC 2626).

It is no more unreasonable to provide for partial disability compensation by excluding a high risk category—pregnancy—than it is to provide for an exclusion of payments beyond a specified amount or beyond a specified duration. All three limitations are rational means employed to achieve the same goal of limiting the demand on the disability insurance funds so that the majority of participants in the fund can be maintained at a level of payment acceptable to all. Admittedly these limitations disadvantage particular groups —those whose disability extends beyond the maximum period of eligibility, those whose disability payment is far below their lost wage, and those whose wage loss results from pregnancy. But such disadvantages in a state insurance program do not reach the level of unconstitutional discrimination under the tests established by this Court.

This Court in *Dandridge v. Williams,* 397 U.S. 471 (1970), was asked to hold that a state regulation, in the social and economic field, which resulted in some disparity in grants of welfare payments to the largest AFDC families, violated the Equal Protection Clause. This Court refused to revert to the long past era when the Court thought the Fourteenth Amendment gave it power to strike down state laws "because they may be unwise, improvident, or out of harmony with

a particular school of thought." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488, as cited in *Dandridge, supra*, at 484. In so doing this Court established the following test:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical it may be, and unscientific.' *Metropolis Theatre Co. v. City of Chicago*, 208 U.S. 61, 69-70, 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan v. Maryland*, 366 U.S. 420, 426. (397 U.S. at 485.)
>
> "But the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61. It is enough that the State's action be rationally based and free from invidious discrimination." 397 U.S. at 486-487.

In *Jefferson v. Hackney*, 406 U.S. 535 (1972), the Texas policy of providing a lower percentage of welfare benefits to families with dependent children than was provided to adult recipients was attacked as vio-

lating the Equal Protection Clause. In upholding the Texas policy this Court noted:

"This Court emphasized only recently, in *Dandridge v. Williams,* 397 U.S. 471, 485, 25 L.Ed.2d 491, 501, 90 S.Ct. 1153 (1970), that in 'the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.' A legislature may address a problem 'one step at a time,' or even 'select one phase of one field and apply a remedy there, neglecting the others.' *Williamson v. Lee Optical Co.,* 348 U.S. 483, 489, 99 L.Ed. 563, 573, 75 S.Ct. 461 (1955). So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them.

"The standard of judicial review is not altered because of appellants' unproved allegations of racial discrimination. . . . (406 U.S. 546-547.)

". . . The acceptance of appellants' constitutional theory would render suspect each difference in treatment among the grant classes, however lacking in racial motivation and however otherwise rational the treatment might be. Few legislative efforts to deal with the difficult problems posed by current welfare programs could survive such scrutiny, and we do not find it required by the Fourteenth Amendment.

"Applying the traditional standard of review under that amendment, we cannot say that Texas' decision to provide somewhat lower welfare bene-

> fits for AFDC recipients is invidious or irrational. Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the sick and elderly. . . . Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it." (406 U.S. 548-549.)

The California law meets the test established by this Court. Although the instant case deals with allegation of sex rather than racial discrimination, the standards applied should not therefore be more rigorous.

The goal of the California State Disability program is to compensate "in part for the wage loss sustained by individuals unemployed because of sickness or injury" (UIC 2601). It does not, and economically cannot, compensate fully for such losses. It is designed to provide best maximum economic protection at an equitable premium to employees. In order to accomplish this objective, the Legislature determined that it was economically necessary to exclude maternity benefits from disability coverage.

The California courts have reviewed and upheld the law now under attack. In the comprehensive opinion in *Clark v. California Employment Stabilization Commission,* 166 Cal.App.2d 326 (1958), the California Court of Appeal discussed in detail the

rationale for excluding maternity benefits from disability insurance coverage:

"... It is a matter of common knowledge that illness or injury arising from pregnancy is classified and excluded from the coverage provided by private contracts of health and accident insurance, in order to effect a premium rate lower than is required in the absence of such an exclusion. It is reasonable to assume that the inclusion of illness or injury caused by pregnancy within the coverage provided by the statute would increase substantially the demands upon the Fund and require a like increase in the contribution rate. As these conclusions are within reason, the inquiry into conditions establishing them is a matter for the Legislature, as is also the determination respecting the relative merits of inclusion or exclusion in comparison with the incident contribution rate. It was properly within the sphere of legislative action to determine whether the objects of the statute in question would be served best by including a disability benefit which reasonably might impose upon the majority of employees a burden disproportionate to contemplated benefits, in order to favor the minority who are included within the classified group. These reasons indicate that the class excluded was not arbitrarily selected, and that the purpose of the exclusion was germane to the legislative object.

"Moreover, to award disability compensation to women employees on account of illness caused by pregnancy, in effect, constituted a maternity benefit plan for a limited group, i.e., women employees. The purpose of the unemployment dis-

ability program is to afford relief to employees sustaining loss of wages on account of illness, and not to confer maternity benefits. To accomplish this purpose the Legislature was entitled legally to adopt such measures as might be necessary to exclude the indirect award of maternity benefits as an incident to the administration of its unemployment disability program. The consequent classification adopted has a substantial relation to the legitimate object thus sought to be accomplished." *Clark, supra,* at 331-332.

The determination made by California that the interests of the community are best served by maintaining a higher rate of benefits at a lower cost by the exclusion of costly maternity benefits is not unreasonable and does not deny equal protection.

II

THE CALIFORNIA DISABILITY INSURANCE LAW IS AN INSURANCE PROGRAM AND MAY VALIDLY EXCLUDE HIGH RISK FACTORS FROM DISABILITY COVERAGE

The California Disability Insurance program was conceived by the Legislature as an insurance program to be operated under insurance concepts. (Mem. Dec. Judge Williams, dissenting at p. 5 and citations at his n. 8). In an insurance program, certain discrimination is inherent in establishing allocation of benefits. But even though legislation may disadvantage a particular group, it does not necessarily deny equal protection of the laws [*James v. Valtierra,* 402 U.S. 137, 142 (1971)]. This is particularly true in the area

of state insurance programs as this Court recognized in *Shapiro v. Thompson,* 394 U.S. 618, 633 and n. 10 (1969).

The law controlling this issue was concisely stated in *Matsuo Yoshida v. Liberty Mutual Insurance Co.,* 240 F.2d 824 (9th Cir. 1957): "'An insurance company has the right to limit the coverage of a policy issued by it and when it has done so, the plain language of the limitation must be respected.'" (quoting *Continental Cas. Co. v. Phoenix Constr. Co.,* 46 Cal.2d 423).

Here the State, acting in the capacity of an insurance company, has limited its coverage by excluding pregnancy benefits. It has expressed this exclusion in the plain language of Section 2626 (UIC): "In no case shall the term 'disability' or 'disabled' include any injury caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter." This exclusion of pregnancy from insurance coverage is a common practice in the insurance industry. "Policies of personal insurance—whether life, accident, health or hospitalization insurance—occasionally contain a specific provision limiting the benefits or excluding coverage in case the event insured against resulted from pregnancy and there is no doubt that such limitation or exclusion provisions are valid and enforceable." (97 A.L.R.2d 1068, 1069).

This Court has itself clearly recognized that the insurer may include in the insurance contract exceptions and exemptions from liability which narrow and

restrict the coverage and are fully binding upon the insured if they are stated without uncertainty or ambiguity. *Bigelow v. Berkshire Life Ins. Co.*, 93 U.S. 918 (1876). As Section 2626 exempts pregnancy from coverage in certain and unambiguous language, the exemption should be upheld.

Alternative insurance to cover appellee's economic loss due to pregnancy is available. Such coverage is more appropriately within the jurisdiction of the legislature or private industry. It does not present a question for judicial resolution.

III

STATE EFFORTS TO LIMIT THE COSTS OF ITS PROGRAMS MUST BE GIVEN DUE CONSIDERATION AND DEFERENCE BY THE COURTS

The determination by California to limit the costs of the disability insurance program by excluding maternity benefits should not be lightly swept aside by the courts. As this Court said in *New York State Department of Social Services, et al. v. Dublino*, ___ U.S. ___, 93 S.Ct. 2507, 2512-2513 (1973), in reversing the lower court's overturning of the New York Work Rules:

> "This is a sweeping step that strikes at the core of state prerogative. . . . It could impair the capacity of the state government to deal effectively with mounting welfare costs and the increasing financial dependency of many of its citizens."

That statement is even more applicable in this case. Indeed to overturn this California law would have catastrophic economic consequences. Such action would distort and disrupt, if not bankrupt, the program.

The effect of the decision below will be to increase the cost to the disability insurance fund by $120.2 million or 30 percent. (Mem. Dec. Judge Williams, dissenting at p. 1, n. 2). As the State fund is operating near capacity already, the effect of these increased costs will threaten the solvency of the fund. In such case, unless the Legislature acts to increase contributions by employees, the alternative is a substantial reduction of benefits (UIC 2604) thereby engendering the increased financial dependency of many California citizens.

This Court wisely observed in *New York State Department of Social Services, et al. v. Dublino,* 93 S.Ct. 2513, that to the extent the New York Work Rules attempted "to cope with the fiscal hardships enveloping many state and local governments, this Court should not lightly interfere. The problems confronting our society in these areas are severe and state governments, in cooperation with the Federal Government, must be allowed considerable latitude in attempting their resolution."

The court below shrugged off the cost factor which prompted the Legislature to adopt the limitation (Mem. Dec. at p. 11) and suggested its own schedule of premiums and maximum contribution rate (Mem. Dec. at p. 12) to replace the amounts fixed by the

California Legislature. Such judicial legislation should not be sustained.

The program at issue is a State disability insurance program. Only the State Legislature has the authority to set the contribution percentage and maximum (UIC 984, 985, 2604). The mere fact that two of the three-judge panel did not agree with the wisdom of the limitations placed upon the insurance coverage by the State Legislature should not render such restrictions unconstitutional.

Indeed such judicial action constitutes an unauthorized limitation upon the rightful independence of state governments, an independence for which the courts must have "scrupulous regard" [*General Motors Corp. v. Blevins,* 199 F.Supp. 381 (DC Colo. 1956)].

IV

CLASSIFICATION INVOLVING SEX IS NOT A DENIAL OF EQUAL PROTECTION SO LONG AS IT HAS A FAIR AND SUBSTANTIAL RELATION TO THE OBJECTIVE OF THE LEGISLATION

The courts have often declared that classifications involving sex are constitutionally valid. *Schattman v. Texas Employment Commission,* 459 F.2d 32 (5th Cir. 1972) at 40, 41, cites a long list of cases upholding legislative classification based on sex.

The application of equal protection to sexual classification was placed in precise perspective by this Court in *Reed v. Reed,* 404 U.S. 71, 75-76 (1971):

> "In applying that clause [Equal Protection] this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. [Citations omitted]. The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike [citation omitted]."

The key issue is whether the California Legislature's exclusion of maternity benefits from State Disability Insurance coverage is reasonable and premised upon some ground of difference which has a fair and substantial relation to the objective of the statute.

The two cases dealing with this type of governmental insurance program both upheld classifications involving sex. In *Clark v. California Employment Stabilization Commission,* 166 Cal.App.2d 326, already discussed, the California Court of Appeal upheld the statute in issue as creating a classification reasonably designed to achieve the objectives of the legislation.

In *Gruenwald v. Gardner,* 390 F.2d 591 (2nd Cir. 1968), *cert. denied,* 393 U.S. 913, a male unsuccessfully attacked those provisions of the Social Security Act establishing different criteria for men and women

for computation of social security benefits at age 62. The criteria provided a lower percentage of benefits for men than for women. In upholding the Social Security classification, the court in *Gruenwald* noted that the two sexes are not fungible, citing *Ballard v. United States,* 329 U.S. 187, 193 (1946) and found:

> ". . . [A] reasonable relationship between the objective sought by the classification, which is to reduce the disparity between the economic and physical capabilities of a man and a woman—and the means used to achieve that objective in affording to women more favorable benefit computations. There is, moreover, nothing arbitrary or unreasonable about the application of the principle underlying the statutory differences in the computations for men and women. Notwithstanding the favorable treatment granted to women in computing their benefits, the average monthly payments to men retiring at age 62 still exceeds those awarded women retiring at that age.
>
> ". . . [T]he trend of authority makes it clear that the variation in amounts of retirement benefits based upon differences in the attributes of men and women is constitutionally valid." 390 F.2d at 592-593.

The circumstances in *Gruenwald* were compellingly similar to those presently before the Court except that the roles of the sexes were reversed. In *Gruenwald,* the males still managed on the average to obtain payments exceeding those of females notwithstanding the computational discrimination. And in the instant case, the women manage to obtain 38 percent of the benefits while making only 28 percent of the contribu-

tions. To put it in dollars and cents, women obtain benefits of $1.37 for every dollar they pay while men receive only $0.89 for each dollar. (Mem. Dec. Judge Williams, dissenting at p. 1, n. 1). The inclusion of maternity benefits in the disability insurance program would increase this disparity substantially. Thus the rationale in *Gruenwald* is directly applicable to the case at bar.

This Court has in the past noted that state insurance programs may make classifications. Indeed, *Shapiro v. Thompson,* 394 U.S. 618 (1969) which was heavily relied on by the court below (Mem. Dec., pp. 6, 11, 14) specifically exempts such insurance programs from the rationale of the opinion for Footnote 10 reads:

> "We are not dealing here with state insurance programs which may legitimately tie the amount of benefits to the individual's contributions." 394 U.S. at 632-633.

V

SECTION 2626 DOES NOT DISCRIMINATE AGAINST WOMEN

Appellees are completely in error when they claim that denial of pregnancy disability benefits constitutes a denial of equal protection because it is based solely on sex. This classification is as burdensome on the male of the species. Most of the pregnant members of the work force have husbands who are in some degree dependent upon the income of the wife to maintain the family standard of living. Thus the denial of pregnancy benefits is not solely a denial of payment to the woman, it is a denial of payment to the family budget shared by both wife and husband. Once this is recognized, the absurdity of appellees' claim of unconstitutional discrimination on the basis of sex is obvious. The exclusion from state insurance coverage falls just as heavily upon the husband as upon the wife because the loss of income sustained thereby is suffered by the entire family unit and not merely by the wife.

Appellees may attempt to counter this contention by arguing that not all pregnant women are married and that the exclusion of pregnancy from disability insurance will fall most heavily on the unwed pregnant woman. California, however, as a part of its balanced social and economic plan, makes provision for support of needy pregnant women, wed or unwed, in its Aid to Families with Dependent Children program. (California Department of Social Welfare Manual of Policies and Procedures 44-213.3 Appendix).

The situation here is analogous to that in *Dandridge* in which this Court reversed the lower court's voiding of the Maryland method of limiting AFDC grants to large families, stating: "Given Maryland's finite resources, its choice is to support some families adequately and others less adequately, or not to give sufficient support to any family." *Dandridge, supra,* at 479.

Like Maryland, California and its work force whose contributions sustain the State Disability Insurance Fund have limited resources. Unless those resources (employee contributions) are increased, the level of benefits must be decreased (UIC 2604) to a point inadequate to support any family. California has made its choice: To support families suffering a disability other than pregnancy through an adequate level of State Disability Insurance benefits and to support other needy families (including unwed pregnant women with no other children), whose inability to make a living stems from pregnancy, through AFDC.

Whether or not this balance achieved by exclusion of pregnancy benefits from State Disability Insurance was the wisest method the California Legislature could have conceived to optimize benefits to the community should not be in issue. This Court in *Jefferson,* 406 U.S. at 551, recently reemphasized the rationale of *Dandridge*:

> "We do not decide today that the [state law] is wise, that it best fulfills the relevant social and economic objectives that [the State] might

> ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

It is precisely this action of the court below, in second-guessing the California Legislature's allocation of State Disability Insurance benefits, which constitutes the basis of *amicus curiae's* interest in this case.

CONCLUSION

The court below has misconstrued its proper role in our system of a federal government. It has failed to understand that a statute of a state is not to be overturned lightly and without consideration of the implications thereof. To let this decision stand will be an invitation to other courts to create new social and economic laws without benefit of the normal balancing factors inherent in the legislative process. Unless corrected by this Court, the lower court decision will have immediate and long-range disruptive effect upon the political, social, and economic well-being of

the people of California. For this reason, Pacific Legal Foundation, as *amicus curiae,* urges that the decision of the court below be reversed.

Respectfully submitted,

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January 1974

(Appendix Follows)

THE FAMILY BUDGET UNIT 44-213

General Provisions

.11 To be eligible for AFDC, a child who is not in foster care must be living with at least one of the relatives specified in Section 44-213.21 in a place of residence maintained as his or their home.

The amount of aid for AFDC family groups shall be computed in accordance with Section 44-212 for the number of persons included in the family budget unit (see Section 44-213.3 and 44-213.4).

.12 For summary charts, see "Forms Appendix," Form CA 241, AFDC Budget Work Sheet.

Definitions

.21 The term "relative" means the following:

a. Father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, first cousin once removed, nephew, niece, half-brother, half-sister, or any such person of preceding generation denoted by prefix of grand, great or great-great.

b. Any person who legally adopted the child or adopted the child's parent, or the natural children or other adopted children of such person.

c. Legally married spouse of any person named above, even though the marriage has been terminated by death or divorce.

.22 The term "living with" shall include persons who would be physically in the home except for circumstances:

.221 That require temporary absence, such as hospitalization, attendance at school, visiting, vacationing, moving to another community, trips made in connection with current or prospective employment, active duty in the armed services, and similar situations, or

.222 That require granting assistance to the relative up to thirty days prior to the child's arrival in the relative's home from placement in a foster family home or institution.

.23 The term "needy person," as used in the following sections, means a person who has no income or who has net income (see Section 44-113.23) that is less than the amount of the AFDC basic standard plus special need, as specified in Sections 44-212 and 44-355, respectively.

44-213 THE FAMILY BUDGET UNIT (Continued) 44-213

ASC .3 Ready Persons Living in The Home Who Shall Be Included As "Resident" in The Basic Family Budget Unit Under EXCEPTION By Section 44-213.4

.31 Children – all related eligible unmarried children, including the unborn child, for whom aid is requested by the child's parent or relative caretaker.

.32 Parent – the eligible child's natural or adoptive parent who requests aid on behalf of the child,

and

.33 Parent's Spouse – The spouse of the eligible child's natural or adoptive parent when the basis for deprivation is the incapacity of a natural or adoptive parent, or the unemployment of the natural or adoptive father (who meets federal conditions in Section 41-440.5), living in the home,

or

.34 Relative – If there is no parent living in the home, the ready adult relative, as defined above, who provides care and supervision of the eligible child.

A Other Ready Related Persons Living in the Home Who May Be Included As "Nonresidents" in The Basic Family Budget Unit With Eligible Children, Under EXCEPTION By Section 44-213.5 for Purpose of Determining Financial Eligibility under Chapter 40-100.

.41 Upon the written request of the parent, or the caretaker if neither parent is living in the home, the following persons living in the home, if ready, shall be members of the Family Budget Unit and shall have their needs and income taken into consideration in determining the financial eligibility of the family.

.411 Unmarried brothers and sisters of the eligible child, including half- or stepbrothers and stepsisters.

.412 The eligible child's stepparent, when the child is deprived by the absence or death of a natural or adoptive parent.

.413 The eligible child's other unmarried parent.

.414 An adult relative, as defined in Section 44-213.21, other than the parent's spouse, whose presence is required to provide care and supervision that cannot be given the eligible child by the only parent living in the home due to the parent's incapacity.

.42 Persons included in the Family Budget Unit under provisions of Section 44-213.41 for purpose of determination of financial eligibility shall not be included in the Family Budget Unit for purposes of grant computation.

44-213 THE FAMILY BUDGET UNIT (Continued) 44-213

AFDC .3 Exclusions

Persons specified in Sections 44-213.3 and 44-213.4 shall be excluded from the family budget unit under the following circumstances:

.31 Exclude a person who receives OAS, AB, APSB or ATD.

.32 Exclude a child, and the child's parent, when the child's eligibility depends on the action of the parent, and the parent refuses to cooperate in determining eligibility or with law enforcement officials (for limitations, see Section 43-119).